

COSTELLO

COONEY & FEARON, PLLC

Experience Innovation

211 W. Jefferson St., Syracuse, NY 13202

Tel: 315.422.1152 | Fax: 315.422.1139

www.ccf-law.com

James J. Gascon, *Partner*

jgascon@ccf-law.com

April 5, 2022

VIA CM/ECF

Hon. Andrew T. Baxter
U.S. Magistrate Judge
Federal Building and U.S. Courthouse
P.O. Box 7396
Syracuse, NY 13261-7396

**Re: New York Central Mutual Fire Insurance Co. v. Sunbeam Products, Inc.
Case No. 5:21-cv-00164-DNH-ATB**

Dear Magistrate Baxter:

Please accept this as a response to defendant's letter brief dated April 1, 2022.

Under the Federal Rules of Civil Procedure (FRCP), a party has an ongoing duty to supplement its expert disclosure in a timely manner if it learns that its disclosure is incomplete or incorrect in some material respect. *See* F.R.C.P. 26(e), *see also*, *Luma Corp. v. Stryker Corp.*, 226 F.R.D. 536 (SDW VA 2005). In the absence of a deadline set forth in a scheduling order, or date set by the court, the deadline for serving supplemental expert disclosure is 30 days prior to trial which is the same deadline for pretrial disclosures under Rule 26(a)(3). *Id.*

FRCP 26(e)(2) states in pertinent part as follows:

For an expert whose report must be disclosed under Rule 26(a)(2)(B), the party's duty to supplement extends both to information included in the report and to information given during the expert's deposition. Any additions or changes to this information must be disclosed by the time the party's pretrial disclosures under Rule 26(a)(3) are due.

In this case, the initial expert reports have provided defendant with enough information to determine the experts' opinions and bases for their opinions. However, some additional information came to light during the deposition of plaintiff's subrogee and her daughter that requires plaintiff to supplement its expert disclosure. Moreover, plaintiff respectfully submits that there will be no "incurable surprise" or prejudice as the defendant will have an opportunity to depose plaintiff's experts regarding their supplemental reports. In this regard, depositions of plaintiff's experts were adjourned due to conflicts in my schedule but also to afford defendant an opportunity to depose plaintiff's experts based upon their supplemental reports.

Hon. Andrew T. Baxter

March 31, 2022

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We thank the Court for its time and attention to this matter.

Very truly yours,

COSTELLO, COONEY & FEARON, PLLC

A handwritten signature in blue ink, appearing to read "James J. Gascon", with a stylized flourish at the end.

James J. Gascon

JJG/ljs

cc: Ryan M. Frierott, Esq.
Daniel J. O'Connell, Esq.